

## INTERGOVERNMENTAL AGREEMENT

This Agreement is made and entered into to be effective the 23rd day of September, 2002, between the TOWN OF TIMNATH ("Timnath") and the TOWN OF WINDSOR ("Windsor") each a municipal corporation of the State of Colorado (collectively referred to as the "Parties").

### Findings

Windsor and Timnath find and agree that:

WHEREAS, pursuant to Colorado Constitution Article XIV, Section 18(2)(a) and C.R.S. §29-1-201, et seq., the Parties may cooperate or contract with each other to provide any function, service or facility lawfully authorized to each and pursuant to C.R.S. §29-20-101, et seq., the Parties are authorized and encouraged to cooperate or contract with each other for the purposes of planning or regulating the development of land, and may provide through intergovernmental agreement for enforceable comprehensive development plans within their jurisdictions; and

WHEREAS, both Parties are committed to planned and orderly growth; to regulating the location of activities and development which may result in increased demands for its services; to reducing and avoiding, where possible, friction between the two Parties; to promoting the economic viability of their respective communities; and

WHEREAS, The Parties desire to establish a boundary between the two municipalities over which neither Party shall annex to avoid conflicts in the future over orderly planning and development, provision of utilities and other municipal services, and to facilitate implementation of other land use planning agreements in the region, including intergovernmental agreements with Larimer County, for separators between Larimer County municipalities and coordination of development along the I-25 corridor; and

WHEREAS, this Intergovernmental Agreement ("Agreement") constitutes a comprehensive development plan, as provided in C.R.S. §29-20-105(2), for the properties affected by this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the Parties agree as follows:

1. Boundary Between Windsor and Timnath. Exhibit A attached hereto and incorporated herein depicts the Urban Growth Management Areas ("UGMAs") of both municipalities. Windsor agrees that it shall not annex any property located within the Timnath UGMA as depicted in the attached Exhibit A. Timnath agrees that it shall not annex any property located in the Windsor UGMA as depicted in the attached Exhibit A.

2. Referrals. In the event that either Party receives a petition or land use application for annexation, zoning, or development of property within their respective UGMA, but adjacent to the common boundary between them, such request shall be referred to the other Party for review and comment at least thirty (30) days prior to the public hearing on the request.

3. Timnath/Windsor Joint Planning Area. Exhibit A depicts an area extending approximately one-quarter mile north and south of the Timnath UGMA southern boundary, east of County Road 5, west of the County Line between Weld and Larimer Counties and north of the alignment of County Road 32E, which the parties have agreed is a Joint Planning Area. In the event that either party receives an annexation petition for any property within such area, it shall work with the other party to agree on the appropriate land use for such property prior to annexing the property. The Parties agree that land uses within the Joint Planning Area shall be limited to agriculture, open space, and single-family residential development at a density not to exceed one unit per 2.29 acres. Unless otherwise agreed by the Parties, no other uses shall be allowed within the Joint Planning Area.

4. Cooperative Planning and Separators Between Timnath and Windsor. The Parties desire to coordinate development plans, including roadway access and alignment of intersections along Larimer County Road 1 (Weld County Road 13) and the roadway, if any, that will become the southern boundary between their respective UGMAs. In addition, the Parties desire that there be a visual separation between Timnath and Windsor along Larimer County Road 13, and the south UGMA boundary of Timnath and the North UGMA boundary of Windsor. Such separations can be accomplished through several means, including but not limited to: public land dedication and acquisition; clustering of development away from the boundary; rural density development; preservation of floodplains; and landscaping. The Parties agree to make good-faith efforts to accomplish such visual separation as land develops along their common UGMA boundaries.

5. Implementation of Agreement. Upon execution of this Agreement, both Parties shall proceed to formally amend and establish their respective Comprehensive Plans as may be necessary to be consistent with the terms of this Agreement. The Parties agree to devote their best efforts, to cooperate as necessary, and to exercise good faith in implementing the provisions of this Agreement. In the event of any conflict between this Agreement and any Comprehensive or Master Plans adopted by either Party in the future, this Agreement shall control.

6. No Third-Party Rights. This Agreement is made solely for the benefit of the Parties hereto, and is not intended to nor shall it be deemed to confer rights to any persons or entities not named as parties hereto.

7. Non-Compliance. If either Party fails to comply with the provisions of this Agreement, the other Party, after providing written notification to the noncomplying Party and upon the failure of the noncomplying Party to achieve compliance within a reasonable time after such notice under the circumstances, or ninety days, whichever is less, may maintain an action in a court of competent jurisdiction in Larimer County for specific performance, injunctive, or other relief. In the event of such litigation, the prevailing Party shall be entitled to payment by the defaulting Party, of its actual attorneys fees and costs incurred.

8. Additions and Modifications. The Parties hereto agree that they shall cooperate with one another and Larimer County in making such additions and modifications to this Intergovernmental Agreement as may be necessary to effectuate its purposes.

9. Term and Termination. This Agreement shall remain in effect for a period of ten (10) years from its effective date. Thereafter, it shall be automatically renewed for successive five (5) year terms unless at least six (6) months prior to the scheduled expiration, either Party notifies the other Party of its decision that the Agreement shall not be renewed.

10. Colorado Laws. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado with venue in Larimer County.

11. Waiver. A waiver of a breach of any of the provisions of this Agreement shall not constitute a continuing waiver or a

waiver of any subsequent breach of the same or another provisions of this Agreement.

12.       Notices.       All notices or other communications hereunder shall be sufficient given and shall be deemed given when personally delivered, or after the lapse of ten business days following mailing by certified mail, postage prepaid, addressed as follows:

To Timnath:               Town of Timnath  
                              PO Box 37  
                              Timnath, CO 80547

Attn:           Town Administrator

To Windsor:              Town of Windsor  
                              301 Walnut Street  
                              Windsor, CO 80550

Attn:           Town Administrator

13.       Effect of Invalidity.       If any portion of this Agreement is finally held invalid or unenforceable by a court of competent jurisdiction as to either Party or as to both Parties, the Parties agree to take such action(s) as may be necessary to achieve to the greatest degree possible the intent of the entirety of this Agreement. If any portion of any other paragraph of this Agreement is finally held invalid or unenforceable by a court of competent jurisdiction as to either Party or as to both Parties, such invalidity or unenforceability shall not affect the other paragraphs of this Agreement, except that any corresponding right or obligation of the other Party shall be deemed invalid.

14.       Amendments.       This Agreement may be amended in writing only by the mutual agreement of the governing bodies of the Parties hereto.

15.       Reliance by the Parties.       Windsor and Timnath understand that each is relying upon all of the promises made by the other in this Agreement, and each agrees (i) not to assert to any court or other body the invalidity or unenforceability of any portion of this Agreement; (ii) to promptly notify the other Party of any legal action which might affect this Agreement; (iii) to allow the other Party to participate in such legal action as the other Party deems appropriate; and (iv) to defend this Agreement in such legal action.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed.

TOWN OF WINDSOR, COLORADO

W. Wayne Miller  
W. Wayne Miller, Mayor

ATTEST:

Catherine M. Kennedy  
Catherine M. Kennedy, Town Clerk



TOWN OF TIMNATH, COLORADO

Annalee Foster  
Annalee Foster, Mayor

ATTEST:

Carol Fischbach  
Carol Fischbach, Acting Town Clerk

APPROVED AS TO FORM:

John P. Frey  
John P. Frey  
Town Attorney for Windsor

Kathleen E. Haddock  
Kathleen E. Haddock  
Town Attorney for Timnath

APPROVED AS TO CONTENT:

Rod Wensing  
Rod Wensing  
Windsor Town Administrator

Joseph A. Racine  
Joseph A. Racine  
Timnath Town Administrator

# EXHIBIT A

## PLANNING AREAS

### TOWNS OF WINDSOR & TIMNATH

September 16, 2002

#### LEGEND

